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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5350

DATE COMPLAINT FILED: February 24, 2003

DATE OF NOTIFICATION: March 3, 2003 and
May 7, 2003

DATE ACTIVATED: September 30, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
May 31, 2007

MUR: 5354

DATE COMPLAINT FILED: March 5, 2003

DATE OF NOTIFICATION: March 10, 2003

DATE ACTIVATED: September 30, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
August 22, 2007

MUR: 5361

DATE COMPLAINT FILED: April 15, 2003

DATE OF NOTIFICATION: May 1, 2003

DATE ACTIVATED: September 30, 2003

EXPIRATION OF STATUTE OF LIMITATIONS:
October 28, 2007

COMPLAINANTS:

Michael J. Shelton (MUR 5350)

James E. Merritt (MUR 5354)

Jan Schneider (MUR 5361)

Schneider for Congress and Harold Schneider, as
treasurer (MUR 5361)

RESPONDENTS:

Schneider for Congress and Harold Schneider, as
treasurer¹ (MUR 5350 and 5354)

Michael J. Shelton (MUR 5361)

¹ Jan Schneider was notified "as treasurer" when these complaints were filed, because the former treasurer for the Schneider for Congress Committee had resigned and the Committee had not yet amended its statement of organization to designate a new treasurer. The Committee filed an amended statement of organization on March 13, 2003 designating Harold Schneider as its new treasurer.

Jan Schneider (MUR 5350)
Harold Schneider (MUR 5350) (in his
personal capacity)
Samuel Schneider (MUR 5350)
Jane Trainor (MUR 5350)
Josh Trainor (MUR 5350)
Seth Schneider (MUR 5350)
Barbara Pearl (MUR 5350)
Shahala Arbabi (MUR 5350)
Joseph Kalish (MUR 5350)
Lynn Kalish (MUR 5350)
Dr. Elahe Mir-Djalali (MUR 5350)
Katherine Schneider (MUR 5350)
Pierre M. Omidyar (MUR 5350)
Pamela K. Omidyar (MUR 5350)

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 433(c)
2 U.S.C. § 434(b)
2 U.S.C. § 439a(b)(2)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(3)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d
2 U.S.C. § 441d(a)(1)
2 U.S.C. § 441f
11 C.F.R. § 109.1(b)(5)
11 C.F.R. § 116.5(b)

INTERNAL REPORTS CHECKED: Federal Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION AND SUMMARY²

Jan Schneider was a candidate for the U.S. House of Representatives in Florida's 13th
district in 2002. Michael Shelton served as the Schneider for Congress Committee's

² All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act") herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 ("Committee") "Finance Director," albeit in a volunteer capacity and, in addition, had
2 responsibilities in connection with the placement of political communications. Toward the end
3 of the campaign, four political communications were released which bore, or allegedly bore,
4 disclaimers indicating that they had been authorized by the Committee and the candidate: an
5 advertisement which ran on television for one day and which allegedly criticized Schneider's
6 opponent, Katherine Harris; videotapes, which were allegedly longer versions of the television
7 advertisement that were allegedly mailed to certain voters;³ a print advertisement criticizing
8 Harris that appeared in the Bradenton Herald; and mailers allegedly misrepresenting Schneider's
9 position on Social Security. The parties disagree as to whether Shelton placed the
10 communications at issue—the Committee charges that he was at least in part responsible for
11 doing so, whereas Shelton maintains that Jason McIntosh, another campaign worker, was largely
12 responsible for the communications.

13 Schneider became angry because she felt the television advertisement, videotapes, and
14 newspaper advertisement violated her directive against negative advertising, the Social Security
15 mailers misrepresented her position, and that she had not approved or authorized any of these
16 four communications. As a consequence, Shelton became disassociated with the Committee; he
17 was either fired (according to the Committee) or resigned (according to him) the Friday before
18 the election. After the election, Schneider initially withheld \$39,277.84 that Shelton had
19 advanced for costs associated with the Social Security mailers and two additional mailers.
20 Shelton demanded reimbursement. Ultimately, Schneider reimbursed him \$31,245.75 for the
21 two non-Social Security mailers, but she declined to reimburse him for the remaining \$8,032.09

³ In his Response to MUR 5361, Shelton states that he believes only one copy of the video was made and that it was not distributed. Response at 25.

1 in printing and mailing costs he had paid for the Social Security mailers.⁴ The parties also
2 feuded over Shelton's retention of computerized records of FEC disclosure reports that he had
3 prepared for the Committee as a campaign volunteer; Shelton insisted that the Committee pay for
4 them if they wanted them.⁵ In addition, Shelton's roommate, Allen McReynolds, sued Schneider
5 in small claims court for the return of a card table and vacuum cleaner allegedly loaned to the
6 campaign. (This suit has since been settled.)

7 Against this heated background, Shelton and the candidate and the Committee filed with
8 the FEC cross-complaints and cross-responses that alleged violations of the Act.⁶ In MUR 5350,
9 Shelton alleges that: the Committee may have accepted excessive contributions from individuals
10 who made contributions to Schneider's primary and general elections with \$2,000 checks;⁷
11 Harold Schneider, the candidate's father, may have reimbursed contributions made by his family
12 members to Schneider's campaign; the Committee purchased a television for Harold Schneider
13 from campaign funds; and the Committee failed to report properly nearly \$100,000 in debts,
14 including some allegedly owed to Shelton himself. The Committee filed MUR 5361 against
15 Shelton, alleging that Shelton was responsible for running four political communications that
16 bore false disclaimers stating that Schneider and the Committee had authorized them when, in

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⁴ The Committee also paid a vendor \$1,385 for graphic design of the mailers.

⁵ See A.O. 1995-10 (in matter where former treasurer retained required records, Commission found that the Act and its regulations recognized only the authorized committee and its duly designated treasurer as having legal title to the records, but the Commission also found that the Act does not provide a statutory remedy to the committee to compel its former treasurer to deliver the records to the committee). Although it appears that this dispute has not been resolved, it has not prevented the Committee from participating in the Commission's audit. See n. 8.

⁶ Some of the filings were replete with irrelevant allegations of a personal nature which will not be further addressed here.

⁷ These individuals, who are respondents in MUR 5350, are Samuel Schneider, Jane Trainor, Josh Trainor, Seth Schneider, Barbara Pearl, Shahala Arbabi, Joseph Kalish, Lynn Kalish, Dr. Elahe Mir-Djalali, Katherine Schneider, Pierre M. Omidyar, and Pamela Omidyar.

1 fact, they had not. In addition, James E. Merritt, who identifies himself as a former Committee
2 volunteer, filed MUR 5354, alleging that the Committee had failed to report properly certain
3 unitemized contributions that it had received in both its 2002 12-Day Pre-General and October
4 Quarterly Reports. Both Shelton and the Committee, as well as other respondents, provided
5 responses denying the allegations; the Committee denied the allegations in MUR 5354 as well.
6 Shelton's response to MUR 5361 added the allegation that the Committee had operated for
7 almost three months without a treasurer. Subsequently, the Audit Division completed an audit of
8 the Committee.⁸

9 As discussed in more detail below, with respect to the Committee's allegations
10 concerning Shelton's placement of false disclaimers on the four political communications, this
11 Office recommends that the Commission find no reason to believe that Shelton violated 2 U.S.C.
12 § 441d in connection with disclaimers indicating that the communications were authorized,
13 because it appears that Shelton was an agent of the Committee for the purpose of authorizing the
14 communications, and arguably had the candidate's permission to authorize distribution of them
15 without her explicit advance approval, and either the Committee or Shelton apparently paid for
16 the communications in full or in part. However, this Office recommends that the Commission
17 find reason to believe that the Committee violated 2 U.S.C. § 441d(a)(1) on the basis that the
18 disclaimers on two of the four political communications were technically defective because they
19 did not state that the Committee had paid for the communications. In addition, this Office

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⁸ The audit fieldwork took place in Sarasota, Florida from October 6, 2003 to October 24, 2003. The audit, which covered the 2002 election cycle (January 1, 2001 to December 31, 2002 for House of Representatives candidates), was considered a "Limited Scope" audit, including a review of the source of candidate loans, a review of the disclosure of contributions from individuals received through MoveOn.Org, an online political action committee, and a review of disbursements. The Committee made the corrections discovered during the audit as recommended in the Interim Audit Report; the Commission approved the final Audit Report on June 18, 2004.

1 recommends that the Commission find reason to believe that Shelton and Marilyn Harwell, the
2 Committee's campaign manager, violated the Act by making excessive contributions in the form
3 of advances and that the Committee violated the Act by receiving these and other excessive
4 contributions and by failing timely to amend its statement of organization to reflect the name of
5 its new treasurer. We recommend that the Commission find no reason to believe that Jan
6 Schneider's father, Harold Schneider, violated the Act in connection with allegations that he
7 reimbursed family members for their contributions to her campaign, or that the Committee
8 violated the Act in connection with allegations that it purchased a television set for him. In
9 connection with the recommendations to find reason to believe, we also recommend that the
10 Commission take no further action as to the respondents who are the subjects of such findings,
11 for the reasons discussed *infra*.

12 In addition, this Office recommends that the Commission take no action with respect to
13 the alleged excessive contributions from individuals, who each made contributions with \$2,000
14 checks, and with respect to the alleged reporting violations that overlap with the audit of the
15 Committee, which has, as previously noted, corrected its reporting errors. Finally, this Office
16 recommends that the Commission close the file in this matter.

17 II. FACTUAL AND LEGAL ANALYSIS

18 A. The Disclaimer Issue

19 The Committee's complaint in MUR 5361 focused on Shelton's alleged placement of
20 "false disclaimers" on the television advertisement, the Bradenton Herald advertisement, the
21 Social Security mailers and the videotapes. Neither Shelton nor the Committee provided this
22 Office with the videotapes or the text of the television advertisement, and this Office has not
23 been able to locate them in public sources. According to the Committee, the television

1 advertisement bore the disclaimer "Paid for by Schneider for Congress. Approved by Jan
2 Schneider (D)" and the videotapes included the "false designation 'Approved by Jan Schneider
3 (D).'" The Committee provided copies of the Bradenton Herald advertisement and the Social
4 Security mailers. The former contained a disclaimer stating, "Paid political advertisement
5 authorized by Jan Schneider for Congress. Approved by Jan Schneider (D)," and the disclaimer
6 on the mailers stated "Pd. pol. adv. authorized by Jan Schneider for Congress. Approved by Jan
7 Schneider (D)." Response, MURs 5350 and 5354 at 4; Complaint, MUR 5361 at 4-6; Exhibit E.
8 The Committee asserts that these disclaimers were "false" because Schneider had not seen nor
9 authorized any of these political communications. Further, the Committee maintains that had
10 Schneider reviewed them in advance, she would not have approved them because the television
11 advertisement, videotapes, and newspaper advertisement contained "negative advertising," which
12 Schneider wanted to avoid, and because the Social Security mailers allegedly misrepresented her
13 position. In short, the Committee asserts that the disclaimers were "false" because they said
14 Schneider had approved or authorized the communications, and the Committee maintains she did
15 not.

16 Section 441d(a) of the Act, if otherwise applicable, provides for different disclaimers
17 depending on who has authorized and paid for the communications. *Compare* 2 U.S.C.
18 §§ 441d(a) (1), (2), and (3). For the reasons discussed below, we conclude that section
19 441d(a)(1) governs the disclaimers required on the television and newspaper advertisements and
20 the Social Security mailers.⁹

21 Section 441d(a)(1) states in pertinent part that "[w]henver any person makes an
22 expenditure for the purposes of financing a communication that expressly advocates the election

⁹ With respect to the videotapes, *see* n. 15, *infra*.

1 or defeat of a clearly identified candidate, or that solicits any contribution through any
2 broadcasting station, newspaper . . . [or] direct mailing . . . such communication, *if paid for and*
3 *authorized by a candidate, an authorized political committee of a candidate, or its agents*, shall
4 clearly state that that the communication has been paid for by such authorized political
5 committee . . . ” 2 U.S.C. § 441d(a)(1) (emphasis added). All of the communications in issue
6 contained or allegedly contained express advocacy and some “person” associated with the
7 Committee made expenditures for financing them since vendors created them and looked to the
8 Committee or its agents for payment, bearing in mind that an expenditure is “made” when
9 someone enters into a “contract, promise or agreement” to make one. 2 U.S.C. § 431(9)(A)(ii).

10 With respect to authorization, while the Act does not define “authorization,”
11 section 441d(a)(1) does not restrict the persons who may authorize communications to the
12 candidate, but extends it to agents of authorized political committees. Moreover, since
13 communications may have many component parts, it is possible that there may be more than one
14 person involved in the authorization process, rendering it appropriate to analyze whether any
15 particular agent can be said to have “authorized” the communications in question. Since
16 Schneider has denied expressly authorizing any of them, the issue is whether Shelton can be
17 deemed an “agent” of the Committee for purposes of having authorizing them. We believe he
18 can be.

19 Although neither the Act nor 11 C.F.R. § 110.11 define “agent,” the Commission’s
20 regulations pertaining to independent expenditures define “agent” as “any person who has actual
21 oral or written authority, either express or implied, to make or to authorize the making of
22 expenditures on behalf of a candidate . . . ” 11 C.F.R. § 109.1(b)(5). The Committee itself
23 provided information showing that Shelton was its agent under this formulation.

1 First, the Committee submitted a statement from its former treasurer, Carroll Johnson,
2 declaring that "[c]hecks were to be written by me, only upon presentation to me of bills
3 approved, in the beginning, by Jan Schneider, and later by Michael Shelton or sometimes by Jan
4 Schneider. Usually, checks were to be given by me to the finance chair [Shelton] for proper
5 payment." Response, MURs 5350 and 5354, Exhibit A. By submitting this statement, the
6 Committee acknowledges that Shelton generally could make and authorize expenditures on
7 behalf of the Committee and therefore was its agent.

8 Moreover, an account of a meeting on October 18, 2002 submitted by the Committee
9 indicates that Shelton may have been specifically authorized to make expenditures for the
10 political communications. In his Response to MUR 5361, Shelton stated that at this meeting,
11 while discussing political communications, Schneider told him—in an apparently general
12 statement—"You do what you think is best. You know much more than I do about these things.
13 I trust you completely." An unsworn account by Schneider campaign manager Marilyn Harwell,
14 submitted by the Committee as part of its Response to MURs 5350 and 5354, corroborates that
15 when Shelton told Schneider that there was not much time to tie down air time and print space
16 before the election, "Jan said she trusted Michael's judgment, he knew best, and he should make
17 the decision on which media to use." Response, MURs 5350 and 5354, Exhibit F. While
18 Harwell maintained that the authorization was limited to choice of media, and "[t]here was no ad
19 copy presented and no discussion of message content," neither her nor the Committee's accounts
20 claim that Shelton was required to get advance content approval from Schneider before
21 authorizing political communications.

22 Even assuming that Shelton acted contrary to Schneider's known wishes by running

1 negative advertising--and there is some evidence indicating that was the case¹⁰ -- he was no less
2 an agent of the Committee for purposes of his authority to authorize advertising on the
3 Committee's behalf. Where a principal grants an agent express or implied authority, the
4 principal generally is responsible for the agent's acts within the scope of his authority.¹¹ See
5 *Weeks v. United States*, 245 U.S. 618, 623 (1918). See also *Rouse Woodstock Inc. v. Surety*
6 *Federal Savings & Loan Ass'n*, 630 F. Supp. 1004, 1010-11 (N.D. Ill. 1986) (principal who
7 places agent in position of authority normally must accept the consequences when the agent
8 abuses that authority).¹² See also A.O. 1992-29 (committee employee who left contribution
9 checks in a drawer until after the ten day deposit requirement expired, who acted without the
10 treasurer's knowledge and in conflict with express instructions, was nonetheless an agent of the
11 committee) and MUR 3585 (Commission found that committee staffer who committed numerous
12 violations of the Act and who embezzled funds from the committee was an agent of the

¹⁰ The Committee submitted a declaration indicating that Shelton and another campaign worker, Jason McIntosh, whose role will be discussed *infra*, went forward with political communications knowing that they were inconsistent with Schneider's wishes. Keith Fitzgerald, a political science professor and consultant for the Schneider campaign, states in his declaration that "both Mr. Shelton and McIntosh stated that they were considering airing their attack ad contrary to the express directives of the candidate and without informing her." Declaration of Keith A. Fitzgerald dated June 9, 2003, attached to letter by Schneider's counsel dated June 17, 2003. For his part, Shelton maintains that the television advertisement was not negative and that a number of senior advisors to the campaign thought it was good and should be used. Response, MUR 5361 at 19. Fitzgerald also states that McIntosh and Shelton told him "that they were considering mailing out videotapes [even though] [t]hey told me that Ms. Schneider was against any such proposal as ineffective and much too costly." This second assertion may be partially contradicted, however, by Harwell's statement indicating that Schneider delegated to Shelton decisions about choice of media.

¹¹ Restatement (Second) of Agency § 228(1) (the conduct of an agent is within the scope of his authority if: (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; [and] (c) it is actuated, at least in part, by a purpose to serve the master. Here, it appears the Committee authorized Shelton to place political communications; to the extent he did, he did so shortly before the election; and there is no indication that his participation was intended to do anything but assist Schneider's campaign.

¹² Even if the agent's conduct is illegal, it is a "well-settled general rule . . . that a principal is liable civilly for the tortious acts of his agent which are done within the course and scope of the agent's employment." 3 Am. Jur. 2d Agency § 280 at 782. See also *Local 1814, Int'l Longshoremen's Ass'n v. NLRB*, 735 F.2d 1384, 1395 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1072 (holding union liable for scheme in which officer of union conspired with employer to procure illegal kickbacks).

1 committee). Based on the above, it appears that Shelton was an "agent" of an "authorized
2 political committee of a candidate" for purposes of authorizing political communications.

3 As to whether Shelton actually authorized the communications in question, while there
4 may be disagreement concerning the full extent of his participation, it appears that he played a
5 sufficiently key role in the process of placing the communications or approving the payments for
6 them to conclude that he "authorized" them for purposes of section 441d(a)(1) of the Act. For
7 example, although Shelton claims that with respect to at least some aspects of the television
8 advertisement, Jason McIntosh was involved, Response, MUR 5361 at 17, 19-20, 27-28,¹³ he
9 acknowledges the ultimate responsibility for airing it (he was forced to "utilize the McIntosh
10 television commercial" because of Schneider's alleged "failure to participate" in producing a
11 commercial). Response, MUR 5361 at 19-20. Likewise, although Shelton claims that McIntosh
12 wrote and produced the Social Security mailers, Shelton directly advanced the funds to the
13 vendor for their printing and mailing (Response, MUR 5361 at 26-27; Response, MURs 5350
14 and 5354, Exhibit N). Shelton also denies having written the newspaper advertisement copy, but
15 acknowledges reserving space with the newspaper's sales department and authorizing the
16 Committee's issuance of a check to pay the Bradenton Herald for the advertisement (Response,
17 MUR 5361 at 27-29).

¹³ McIntosh's role in the campaign and in the events in issue remains shadowy. According to Shelton, McIntosh was hired as campaign manager during the last week of October 2002. Response, MUR 5361 at 17. According to the Committee, McIntosh was a campaign worker hired to help Shelton. Response, MURs 5350 and 5354 at 6. Shelton claims that McIntosh was substantially involved in the creation of the television advertisement and the newspaper advertisement. For its part, the Committee brought its complaint only against Shelton, but concedes some involvement by McIntosh in the communications in its Response to MURs 5350 and 5343 at 7, n. 9, and submitted the Fitzgerald declaration (n. 10, *supra*), alleging that Shelton and McIntosh went forward with political communications knowing that they were they were inconsistent with Schneider's wishes. Given the disposition of the disclaimer issue recommended by this Office, *see* discussion *infra*, we do not recommend expenditure of the Commission's scarce resources to investigate Mr. McIntosh's activities.

Turning to the payment aspect, section 441d(a)(1) covers situations where an authorized political committee of a candidate or its agents pay for communications that have been authorized by the committee's agent. Here, the Committee paid for the newspaper advertisement in full, and may have paid its vendors for the bulk of the expenses for the television advertisement (although there is an issue whether Shelton substituted his advertisement for the Committee's).¹⁴ Shelton paid \$8,032 for printing and mailing the Social Security mailers (and sought reimbursement from the Committee), and the Committee paid \$1,385 to a vendor for the mailers' graphic design. Thus, because Shelton, the Committee's agent, authorized these communications and either the Committee or Shelton apparently paid for them in full or part, *see* footnote 14, pursuant to section 441d(a)(1), these communications should have included disclaimers stating that the Committee had paid for them.¹⁵ With respect to the claim that the disclaimers bore "false" language stating that the candidate had approved or authorized the communications, section 441d(a)(1), unlike section 441d(a)(2) which deals with coordinated

¹⁴ The television advertisement is another subject of controversy. The Committee claims that Shelton hired a video company to produce an "attack" advertisement that he "switched" with the advertisement approved by Schneider (Complaint, MUR 5361 at 4), whereas Shelton asserts that Schneider provided him with "amateurish" advertisements that he told her he would refuse to run, and that therefore he was forced to use what he characterized as the "McIntosh commercial." Response, MUR 5361 at 19-10. The expenses for the television advertisement are not completely clear, but the auditors believe that the cost of airtime may have been included in a \$9,089 pre-payment disbursement made by the Committee to Time Warner. They also believe a disputed debt of \$1,868 to Irving Productions, Inc. might be related to the television advertisement. The auditors are not aware of any other disbursements or debts that might relate to the television advertisement in question.

¹⁵ With respect to the videotapes, the issue of authorization and payment is not as clear. Shelton admits only to authorizing the pre-production costs of the videotapes. The Committee is disputing a \$3,074 debt in connection with their editing and duplication and has paid one vendor who the Committee states was involved in producing the videos (Complaint, MUR 5361 at 7, n. 10) although the auditors believe that this payment might in fact have been for two unrelated radio spots. We do not have copies of the videotapes, but the Act might not require that they carry disclaimers at all, because they do not necessarily fall into the media categories addressed in 11 C.F.R. § 110.11(a)(1) (broadcasting stations, newspapers, magazines, outdoor advertising facilities, posters, yard signs, direct mailings, or any other forms of general public political advertising). There is also a dispute between Shelton and the Committee whether the videotapes were mass-produced and mailed. If they were, they might constitute a "direct mailing" which, for the purposes of 11 C.F.R. § 110.11, is defined as "any number of substantially similar pieces of mail [but not including] a mailing of one hundred pieces or less." 11 C.F.R. § 110.11(a)(3). We do not recommend that the Commission expend its scarce resources to resolve these issues.

1 expenditures, does not require any statement concerning approval or authorization. Thus,
2 language indicating that the candidate had specifically authorized the communications might be
3 "false," but it would be superfluous and, while possibly remediable in another forum, apparently
4 would not present a violation of section 441d(a)(1). Accordingly, this Office recommends that
5 the Commission find no reason to believe that Michael Shelton violated 2 U.S.C. § 441d in
6 connection with the allegedly false language indicating that Schneider had approved or
7 authorized the communications. However, it appears that the disclaimers on at least the
8 newspaper advertisement and the Social Security mailers, of which we have copies, were
9 otherwise deficient as they failed to identify who paid for the advertisements, as required by
10 2 U.S.C. § 441d(a)(1), merely stating that they were paid political advertisements and authorized
11 by Schneider, but not that the Committee had paid for them.¹⁶ Accordingly, this Office
12 recommends that the Commission find reason to believe that the Schneider for Congress
13 Committee and Harold Schneider, as treasurer, violated 2 U.S.C. § 441d(a)(1) with respect to
14 these political communications. However, given the confusion concerning the factual
15 circumstances surrounding the communications and the disposition of the other allegations
16 herein, we also recommend that the Commission take no further action with respect to this
17 violation.

18 **B. The Advances Issue**

19 As noted above, Shelton personally paid for \$39,277.84 in expenses related to three
20 mailers, and the Committee has reimbursed him for all but \$8,302.09 related to the Social
21 Security mailers. The Committee alleges that Shelton advanced payment and sought

¹⁶ The television advertisement, which we have not seen, allegedly bore a disclaimer which included the words "Paid for by Schneider for Congress," which would have been adequate under 2 U.S.C. § 441d(a)(1).

1 reimbursement, instead of having the treasurer issue checks, in order to conceal his "clandestine
2 attempt to undermine [Schneider's] positions." Response, MURs 5350 and 5354 at 12.¹⁷
3 Shelton replies by stating that the treasurer was absent and that the vendors required immediate
4 payment; he further notes that campaign manager Harwell had advanced \$10,650 in personal
5 funds on October 28 to pay for radio advertising. Response, MURs 5350 and 5354 at 12, Exhibit
6 N. The Committee's disclosure reports show that the Committee repaid Harwell on November 1,
7 2002.

8 Pre-BCRA, the Act limited individual contributions to no more than \$1,000 per election
9 and no more than \$25,000 per calendar year (2 U.S.C. §§ 441a(a)(1)(A) and (3)) and prohibited
10 political committees from knowingly accepting excessive contributions. 2 U.S.C. § 441a(f). The
11 Commission's regulations provide that expenditures made on behalf of a candidate or a political
12 committee by an individual from his or her personal funds are contributions unless exempt from
13 the definition of contribution under 11 C.F.R. § 100.7(b)(8). 11 C.F.R. § 116.5(b). Advances are
14 not considered contributions if they are for the individual's personal transportation expenses or
15 for usual and normal subsistence expenses incidental to the individual's activity. *Id.*¹⁸ *see also*
16 11 C.F.R. § 100.7(b)(8). However, when an individual pays for other goods or services on behalf
17 of a candidate or a political committee, he or she is making a contribution. 11 C.F.R.

¹⁷ This position is undercut by the Committee's acknowledgement that its check approval procedures were not consistently followed and its admission that Shelton had made advances and sought reimbursement on several previous occasions. Response, MURs 5350 and 5354 at 12, n.23.

¹⁸ See Explanation and Justification of Regulations on Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26382-3 (1989) ([concerning new section 116.5] "[a]lthough many campaign workers may only be able to advance relatively small amounts, individuals with sizable resources may have the ability to circumvent the contribution limits by paying committee expenses and not expecting reimbursement for substantial periods of time . . .").

1 § 116.5(b).¹⁹ Accordingly, although neither the Committee nor Shelton raised the issue, it
2 appears that both Shelton and Harwell made excessive contributions to the Committee, which the
3 Committee knowingly accepted.²⁰

4 Based on the above, this Office recommends that the Commission find reason to believe
5 that Michael Shelton made excessive contributions in violation of 2 U.S.C. §§ 441a(a)(1)(A) and
6 (a)(3) to the Committee and that Marilyn Harwell made an excessive contribution in violation of
7 2 U.S.C. § 441a(a)(1)(A), and that the Schneider for Congress Committee, and Harold Schneider,
8 as treasurer, accepted excessive contributions in violation of 2 U.S.C. § 441a(f). This Office
9 further recommends, based on the contributions not meeting the Audit Division's materiality
10 thresholds, *see* footnote 20, that the Commission take no further action with respect to these
11 violations.

12 **C. Contributions in the Name of Another Issue**

13 Shelton alleges that Schneider received donations from members of her family "which
14 Ms. Schneider had led me to believe" came from funds provided by her father in order to
15 circumvent campaign contribution limits. MUR 5350 Complaint. Schneider characterizes
16 Shelton's charge as a "lie" and defamatory (*see* Schneider's letter to Joseph Stoltz dated April
17 30, 2003 ("Schneider Letter")). In addition, Harold Schneider and his seven contributing family
18 members all deny that Harold Schneider provided them with funds to make campaign

¹⁹ The Commission considers such advances to be in-kind contributions, not direct contributions. *See* MUR 4968 (Perot '96, Inc.). As such, the 60-day grace period in 11 C.F.R. § 103.3(b)(3), during which excessive direct contributions may be refunded, does not apply. *Id.*

²⁰ During its audit of the Committee, the auditors reviewed advances to the Committee, including the Shelton and Harwell advances, to determine whether the advances exceeded the Audit Division's "materiality" thresholds. The auditors found that the Committee repaid all advances, aside from the \$8,032.09 Shelton advance, within 15 days, and that therefore the advances did not exceed the "materiality" thresholds. The auditors instructed the Committee to report the remaining \$8,032.09 as a disputed debt on Schedule D, and the Committee has filed an amended report with the recommended correction.

1 contributions to Schneider.²¹ In his sworn affidavit, Harold Schneider avers that he gave his
2 children and grandchildren the same amount of money every year, and did not increase the
3 amount because Schneider was running for Congress. He also states that “[d]uring the entire
4 period of the campaign—and, indeed, for years before and in the months since—I did not give
5 any of my children or grandchildren any more (or less) money than I have given each one
6 annually (as my wife also did before she passed away in 2000).” Although Harold Schneider
7 does not specify the amount of money he gave his family per year, Jan Schneider states that her
8 father has “consistently” given each of his children and grandchildren “the maximum permitted
9 without federal tax consequences.” Schneider Letter. In 2002, this would have been \$11,000.
10 *Introduction to Estate and Gift Taxes*, IRS Pub. 950 at 4 (Rev. March 2002).

11 This Office recommends that the Commission find no reason to believe that Harold
12 Schneider and his family members violated 2 U.S.C. § 441f in connection with Schneider’s 2002
13 campaign. Pursuant to the reasoning in the Statement of Reasons accompanying MUR 4960
14 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee), Shelton’s allegation that
15 “Ms. Schneider had led me to believe” her father had funded the other family members so they
16 could contribute to Schneider, without any specifics about what she said or did to lead him to that
17 belief, is too vague and speculative to provide a sufficient basis for proceeding with further

18 ²¹ Harold Schneider and the other seven family members all responded to the complaint’s “reimbursement”
allegations. Harold Schneider provided a sworn affidavit (Response, MURs 5350 and 5354, Exhibit B). Lynn
Schneider Kalish (Jan Schneider’s sister) and Joseph Kalish provided an unsworn letter (*id.*, Exhibit I); Seth
Schneider (Jan Schneider’s brother) provided a sworn affidavit which addressed the contributions made by his then-
18 year old daughter, Katherine Schneider, and his then-15 year old son, Samuel Schneider; Jane Trainor (Jan
Schneider’s sister-in-law and Seth Schneider’s wife) provided a sworn affidavit and Joshua Trainor (Jane Trainor’s
son and Seth Schneider’s step-son) provided a sworn affidavit (*id.*, Exhibit J).

1 enforcement action. Although the Schneider family's affidavits and other responses denying the
2 allegations are themselves not models of specificity—for instance, Harold Schneider does not
3 specify the exact amount he has given his children and grandchildren every year or for how many
4 years he has made such gifts—neither are they evasive or not credible so as to resuscitate
5 Shelton's weak claims and justify an investigation.

6 **D. Excessive Contributions Issue**

7 Under the Act, pre-BCRA, an individual's contribution to a candidate was limited to
8 \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Contributors were encouraged to designate their
9 contributions in writing (11 C.F.R. § 110.1(b)(2)(i)); they could do so by clearly indicating on
10 contribution checks, money orders, or other negotiable instruments the particular election for
11 which the contribution was made (11 C.F.R. § 110.1(b)(4)(i)) or by including a "writing" with
12 their contribution which clearly indicated the particular election with respect to which the
13 contribution was made. 11 C.F.R. § 110.1(b)(4)(ii). However, in the event that a political
14 committee received an individual contribution of \$2,000, twice the pre-BCRA legal limit, before
15 a primary election, the committee had the option of requesting the contributor to redesignate, in
16 writing, the excessive portion of the contribution (\$1,000) to the general election, in accordance
17 with 11 C.F.R. § 110.1(5)(b). 11 C.F.R. § 110.1(b)(4)(iii). Committees were required to retain
18 written redesignations for three years. 11 C.F.R. § 102.9(c).

19 In his complaint, Shelton lists the names of twelve individuals who he alleges had
20 contributed in single checks of \$2,000. Complaint, MUR 5350 at 2. He questions whether the
21 Schneider Committee had the requisite written redesignations. According to Shelton, Schneider
22 instructed him and other individuals who prepared FEC disclosure reports for the Committee to
23 list each contribution as two separate \$1,000 contributions, one for the primary and general

1 elections, respectively. *Id.* Shelton states that when he asked Schneider for the appropriate
2 documentation, she said that she had it; however, Shelton alleges that “[h]aving worked
3 extensively with Ms. Schneider and knowing the fact that she refused on several occasions to
4 produce the documentation, I am of the opinion that the documentation may not exist and as
5 such, the contributions exceed the \$1,000 limit per election cycle per individual.” *Id.*

6 In its Response to MURs 5350 and 5354, the Committee states that Shelton himself
7 accepted checks from two of the individuals listed in his complaint, Lynn Schneider Kalish and
8 Joseph Kalish, Response, MURs 5350 and 5354 at 8; Exhibit I, and submitted a copy of an
9 unsworn letter from the Kalishes. They state therein that Shelton had told them that one check
10 would be fine, and that Ms. Kalish had seen documents in Schneider’s office listing money to be
11 withheld pending the primary outcome. The Committee also submitted affidavits from seven
12 other individuals listed in the complaint, which either state or imply that the checks themselves
13 bore a designation (“the check . . . [was] designated as \$1,000 for the primary election and
14 \$1,000 for the general election . . .”; “I wrote a check for \$2,000, \$1,000 for the primary election
15 and \$1,000 for the general election”).²² In addition, the Committee produced what it apparently
16 deemed to be designation materials for two other individuals (the material for one of the
17 individuals includes information such as the individual’s address and telephone number and a
18 partial photocopy of his contribution check). The Committee included copies of two designated
19 contribution checks for \$2,000 apiece (Response, MURs 5350 and 5354, Exhibit J), but it failed

²² According to the Committee, the remaining individual, Barbara Pearl, contributed \$2,000 through the MoveOn.org website. The Committee offered to obtain a statement from her, if necessary.

1 to provide copies of other checks or contemporaneous instruments of designation, redesignation,
2 or reattribution.²³

3 Because the Committee failed to produce contemporaneous evidence sufficient to entirely
4 rebut the allegation of "paper excessives," this Office recommends that the Commission find
5 reason to believe that the Committee violated 2 U.S.C. § 441a(f), but take no further action.
6 Given the relatively small amount potentially in violation and that the contributions would have
7 been presumptively allowable under the post-BCRA redesignation and reattribution regulations,
8 it would not appear to be a good use of the Commission's limited resources to pursue whether
9 the Committee accepted excessive contributions.

10 **E. Prohibited Personal Use**

11 Shelton charges that in 2002 Schneider purchased a large television set costing \$2,335.47
12 for her father from campaign funds. Complaint, MUR 5350. According to the auditors,

13 ²³ Although the auditors examined these contributions, they did so only to the extent necessary to determine whether the contributions would have been presumptively allowable under the new, post-BCRA redesignation and reattribution regulations, which they appeared to be. Post-BCRA, when an individual makes an excessive contribution to a candidate's authorized committee before the primary election, the committee may automatically redesignate excessive contribution to the general election if the contribution: is made before that candidate's primary election; is not designated in writing for a particular election; would be excessive if treated as a primary election contribution; and, as redesignated, does not cause the contributor to exceed any other contribution limit. 11 C.F.R. § 110.1(b)(5)(ii)(B)(1)-(4). Within 60 days of receiving the contribution, the committee's treasurer must notify the contributor of the amount of the contribution that was redesignated and must inform the contributor that he or she may request a refund of the contribution. 11 C.F.R. § 110.1(b)(5)(ii)(B)(5)-(6).

1 however, it does not appear that Harold Schneider has been using the television set. Instead, it
2 was being stored in a warehouse for use in Schneider's 2004 campaign. Therefore, this Office
3 recommends that the Commission find no reason to believe that the Schneider for Congress
4 Committee and Harold Schneider, as treasurer, violated 2 U.S.C. § 439a(b)(2).

5 **F. Untimely Designation of Treasurer Issue**

6
7 In his response to MUR 5361, Shelton alleges that the Committee had been operating
8 without a treasurer for approximately three months. The FEC website shows that the
9 Commission received a letter on December 13, 2002 from the Committee's original treasurer
10 stating that he had resigned effective December 5, 2002. The Committee did not submit an
11 amended statement of organization naming Harold Schneider as the new treasurer until
12 March 13, 2003, despite the fact that RAD sent a letter dated January 14, 2003 to the Committee
13 reminding the Committee to appoint a replacement treasurer. It appears that Harold Schneider
14 formerly acted as an assistant treasurer, was authorized to write checks in the treasurer's absence
15 and acted as the *de facto* treasurer once the Committee's original treasurer resigned by signing
16 the Committee's financial disclosure reports as the treasurer. See Response, MURs 5350 and
17 5354 at 4-5, 12 and Exhibits A and B.

18 In MUR 3921 (Bell), the Commission found reason to believe that the Bell Committee
19 violated 2 U.S.C. § 433(c) where the Committee failed to amend its statement of organization for
20 one and one-half years to show that Bell, who had been acting as the Committee's treasurer, was
21 in fact the Committee's treasurer. Ultimately, the Commission found probable cause to believe
22 against the Bell Committee and took no further action.

23 The situation here is similar. Therefore, this Office recommends that the Commission
24 find reason to believe that the Schneider for Congress Committee and Harold Schneider, as

1 treasurer, violated 2 U.S.C. § 433(c) for failing to amend its statement of organization within ten
2 days to reflect the name of the new treasurer. However, we also recommend that the
3 Commission take no further action and send an admonishment letter. In light of the disposition
4 of other allegations in this matter, pursuit of a nominal civil penalty for this violation would not
5 be the best use of the Commission's limited resources.

6 **G. Reporting Issues**

7
8 In MUR 5350, Shelton alleges that the Committee violated 2 U.S.C. § 434(b) by failing
9 to report properly a variety of debts totaling approximately \$100,000, some of which involved
10 vendors who had provided goods or services in connection with the disputed political
11 communications or certain individuals formerly associated with the campaign, including Shelton
12 himself. For the most part, with the exception of the \$8,032.09 allegedly owed to Shelton, the
13 alleged debts to former campaign staff included disputed wages, although in the case of one
14 individual, former staffer Misty Smeltzer, Shelton alleges that the Committee failed to list as debt
15 payments FICA and Medicare contributions due the United States government on Smeltzer's
16 behalf. Shelton avers that Smeltzer has filed complaints with the Internal Revenue Service and
17 with the Florida Department of Revenue.

18 To the extent that the Committee has not reported debts accurately, including the one
19 remaining disputed reimbursement claimed by Shelton, the Committee corrected the errors
20 following the Interim Audit Report. The auditors have advised this Office that there is no basis
21 for reporting as debt the purported FICA and Medicare obligations for Smeltzer, as there are no
22 letters from the Internal Revenue Service or the Florida Department of Revenue stating that these

are debts owed by the Committee.²⁷ As to the reporting violations raised in Merritt's complaint in MUR 5354, the Audit Division has advised us that the Committee has corrected the errors of which he complained. Accordingly, this Office recommends that the Commission take no action with respect to the allegations in MURs 5354 or 5350 that the Committee violated 2 U.S.C. § 434(b).

H. The Candidate

The candidate was notified as a respondent in this matter because the Complaint in MUR 5350 specifically alleged that she engaged in conduct that violated the Act. However, it does not appear that she was involved in any conduct that would constitute a basis for her personal liability. Therefore, this Office recommends that the Commission find no reason to believe that Jan Schneider violated the Act or Commission regulations in connection with MUR 5350. Finally, this Office recommends that the Commission close the files in MURs 5350, 5354 and 5361.

III. RECOMMENDATIONS

1. Find no reason to believe that Michael J. Shelton violated 2 U.S.C. § 441d.
2. Find reason to believe that the Schneider for Congress Committee and Harold Schneider, as treasurer, violated 2 U.S.C. § 441d(a)(1) in connection with the failure of disclaimers to state who paid for political contributions and take no further action.
3. Find reason to believe that Michael J. Shelton violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3) and take no further action.
4. Find reason to believe that Marilyn Harwell violated 2 U.S.C. § 441a(a)(1)(A) and take no further action.

²⁷ As Shelton has stated that Smeltzer filed complaints with the Internal Revenue Service and the Florida Department of Revenue, there appears to be no need for the Commission to report possible non-FECA violations to those agencies.

5. Find reason to believe that the Schneider for Congress Committee and Harold Schneider, as treasurer, violated 2 U.S.C. § 441a(f) and take no further action.
6. Find no reason to believe that Harold Schneider violated 2 U.S.C. § 441f.
7. Find no reason to believe that Samuel Schneider violated 2 U.S.C. § 441f.
8. Find no reason to believe that Jane Trainor violated 2 U.S.C. § 441f.
9. Find no reason to believe that Josh Trainor violated 2 U.S.C. § 441f.
10. Find no reason to believe that Seth Schneider violated 2 U.S.C. § 441f.
11. Find no reason to believe that Joseph Kalish violated 2 U.S.C. § 441f.
12. Find no reason to believe that Lynn Kalish violated 2 U.S.C. § 441f.
13. Find no reason to believe that Katherine Schneider violated 2 U.S.C. § 441f.
14. Take no action with respect to Samuel Schneider.
15. Take no action with respect to Jane Trainor.
16. Take no action with respect to Josh Trainor.
17. Take no action with respect to Seth Schneider.
18. Take no action with respect to Joseph Kalish.
19. Take no action with respect to Lynn Kalish.
20. Take no action with respect to Katherine Schneider.
21. Take no action with respect to Pierre M. Omidyar.
22. Take no action with respect to Pamela Omidyar.
23. Take no action with respect to Barbara Pearl.
24. Take no action with respect to Shahala Arbabi.
25. Take no action with respect to Dr. Elahe Mir-Djalali.
26. Find no reason to believe that the Schneider for Congress Committee and Harold Schneider, as treasurer, violated 2 U.S.C. § 439a(b)(2).

27. Find reason to believe that the Schneider for Congress Committee and Harold Schneider, as treasurer, violated 2 U.S.C. § 433(c) and send an admonishment letter.
28. Take no action with respect to the allegations in MURs 5350 and 5354 that the Schneider for Congress Committee, and Harold Schneider, as treasurer, violated 2 U.S.C. § 434(b).
29. Find no reason to believe that Jan Schneider violated the Federal Election Campaign Act, as amended, or Commission regulations in connection with MUR 5350.
30. Approve the appropriate letters.
31. Close the files in MURs 5350, 5354 and 5361.

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6/21/04
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